ROHTAS & ANR. A

v.

THE STATE OF HARYANA

(Criminal Appeal No.764 of 2009)

NOVEMBER 05, 2019 B

[A. M. KHANWILKAR AND DINESH MAHESHWARI, JJ.]

Constitution of India: Art.136 – Special leave petition – Re-appreciation of evidence by Supreme Court – Permissibility – Held: Supreme Court, while entertaining an appeal by way of special leave under Art.136, ordinarily, will not attempt to re-appreciate the evidence on record unless the decision of the Trial Court or the High Court is shown to have committed a manifest error of law or procedure or the conclusion reached by the courts below is, on the face of it, perverse – Merely because another view on the same evidence is possible, that cannot be the basis to interfere with the finding of fact recorded by the Courts below much less concurrent finding of facts. C D

Penal Code, 1860: s.302/34 – Six accused – Knife blows on the stomach of the victim-deceased by the appellants causing fatal injuries – Evidence of eye-witnesses (PW-1 and PW-2) – Conviction of appellants-accused no.1 and 2 and acquittal of others – Prosecution case was that on the fateful day, all the accused persons obstructed the deceased who was riding a motorcycle – Immediately, after he was stopped, both the appellants inflicted knife blows on the stomach of the deceased one after the other – Evidence of PW-1 and PW-2 was accepted by the Trial Court as well as the High Court as truthful – No reason to deviate from that concurrent view taken by the Courts below – Deficiencies pointed out by the appellants in the investigation were insignificant and trivial and whole evidence of PW-1 and PW-2 was corroborated by the other evidence in the form of medical reports and recovery of human blood stained soil from the spot where the deceased was assaulted – Further, there was no delay in lodging FIR –Recovery of weapon used by accused No.1 during the commission of the offence also reinforced the role and involvement of the appellants in the commission of the crime – The quality substantive evidence E F G H

on record clearly established the guilt of the appellants – The fact that there was no evidence about the previous enmity and that no evidence was produced by the prosecution in that regard, cannot be the basis to reverse the concurrent view taken by two courts below, recording finding of guilt against the appellants – Order of conviction of appellants is not interfered with.

Criminal Law: Benefit of doubt – Wrong benefit given to acquitted accused cannot enure to the advantage of the convicted accused against whom clear, truthful and unassailable evidence was available.

Witnesses: Reaction of witnesses – Held: There cannot be uniformity in the reaction of witnesses – There is possibility of variation and difference in the behaviour of witnesses or their reactions from situation to situation and individual to individual – The Court must not decipher the evidence on unrealistic basis – The difference in the statements of the prosecution witnesses, in the instant case, about the conditions of the deceased when he was admitted in the hospital, therefore, would not take the matter any further especially when the medical reports clearly indicated that he was admitted in the hospital in semi-conscious state and was declared dead by the doctor only thereafter.

Dismissing the appeal, the Court

HELD: 1. It is well established position in law that Supreme Court, while entertaining an appeal by way of special leave under Article 136 of the Constitution of India, ordinarily, will not attempt to reappreciate the evidence on record unless the decision of the Trial Court or the High Court is shown to have committed a manifest error of law or procedure or the conclusion reached by the Courts below is, on the face of it, perverse. [Para 12] [872-E]

2. PW-1 was extensively cross-examined but the cross-examination did not make any dent with regard to his statement in the examination-in-chief that Accused No.1 and Accused No.2 gave knife blow each on the stomach of the victim-deceased and caused the fatal injuries. Same was the position with regard to the evidence of PW-2. Even he plainly mentioned about the manner in which the deceased was stopped by all the accused

persons when he was riding his motorcycle and immediately thereafter Accused No.1 and Accused No.2 inflicted knife blows on his stomach one after the other. The fact that similar role was ascribed to Accused No.4 and Accused No.6 but the High Court acquitted them by giving benefit of doubt cannot be the basis to undermine the quality of evidence which already came on record. Neither the State nor the complainant assailed the finding recorded by the High Court qua acquitted accused. That would not mean that a wrong relief given to co-accused should also be given to the appellants against whom clinching evidence was on record about the manner in which the offence was committed by them. [Paras 15-16] [876-F-G; 877-E-H]

3. The evidence of PW-1 and PW-2, the eye witnesses was that all the accused persons obstructed the deceased who was riding a motorcycle. Immediately, after he was stopped, both the appellants inflicted knife blows on the stomach of the deceased one after the other. This role of the appellants was distinct. Thereafter the deceased attempted to flee away from the spot when he was stopped by the other accused persons and two of them inflicted knife blows one after the other. The events, therefore, can be segregated. So far as the second event is concerned, the Trial Court and the High Court gave benefit of doubt to the concerned accused. In that sense, the appellants are not concerned with that part of the event. Neither the State nor the complainant has assailed the acquittal of other accused. In any case, wrong benefit given to those accused cannot enure to the advantage of the appellants against whom clear, truthful and unassailable evidence is forthcoming. For, neither the presence of PW-1 and PW-2 can be doubted nor their evidence can be discarded on the specious ground that they are related to the deceased and are therefore interested witnesses. Indubitably, just because the witnesses are related cannot be the basis to discard their evidence, if it is otherwise natural and truthful. There is no reason to deviate from that concurrent view taken by the Courts below. [Paras 18-20] [878-C-G; 879-A]

4. The so-called deficiencies pointed out by the appellants in the investigation or the prosecution case, are insignificant and trivial and cannot be the basis to reject the whole evidence of

PW-1 and PW-2 which is corroborated by the other evidence in the form of medical reports and recovery of human blood stained soil from the spot near the hospital where the deceased was assaulted by the accused. The fact that the blood group of the human blood stained soil cannot be ascertained, can be no basis to discard that piece of evidence. Even the recovery of weapon used by Accused No.1 during the commission of the offence reinforces the role and involvement of the appellants in the commission of the crime. The quality substantive evidence on record clearly establishes the guilt of the appellants. [Para 22] [882-A-C]

5. There cannot be uniformity in the reaction of witnesses. The Court must not decipher the evidence on unrealistic basis. There can be no hard and fast rule about the uniformity in human reaction. The difference in the statements of the prosecution witnesses about the conditions of the deceased when he was admitted in the hospital, therefore, does not take the matter any further especially when the medical reports clearly indicate that he was admitted in the hospital in semi-conscious state and was declared dead by the doctor only thereafter. [Para 23] [882-D-E]

6. As regards, the delay in registration of FIR, that aspect was also considered by the Trial Court and the finding recorded by the Trial Court rejecting that defence plea found favour with the High Court. There has been no delay as is evident from the contemporaneous record. The deceased was admitted in hospital immediately after the incident. He was declared dead at 11.00 p.m. The City Police Station was informed by the doctor at 11.30 p.m. Thereafter, PW-1 complained to ASI (PW-5) near hospital building and finally the FIR was registered at 0015 hrs. on the night between 25th and 26th April, 1998. In view of that, the view taken by the Trial Court that there was no delay in registration of the FIR is upheld in the fact situation of the instant case. [Paras 24-26] [882-F; 883-C-D; 884-B-C]

7. The defence took self-contradictory stand. First, it was asserted that the deceased sustained injuries in the first incident which had occurred at 6.30 p.m. on the same evening. However, no evidence in support of that plea was forthcoming. Then, the

alternative plea taken by the defence was that the deceased was, in fact, injured at some other place and was brought in a three-wheeler to the hospital. Even this plea of the accused was held to be figment of imagination and without any evidence in support thereof. On the other hand, the prosecution produced evidence in the form of human blood soiled mud from the spot near the hospital where the incident in question had occurred as stated by PW-1 and PW-2. Even the fact that the accused were acquitted in the cross-cases filed with regard to the first incident which took place at 6.30 p.m. on the same evening would not take the matter any further for the appellants. That was an independent incident whereas the finding of guilt recorded against the appellants was concerning the incident which had taken place at 8.30 p.m. near the Government Hospital as proved by the prosecution witnesses. [Paras 27-28] [884-C-G]

Duli Chand v. Delhi Administration **(1975) 4 SCC 649 ;** *Mst. Dalbir Kaur & Ors. v. State of Punjab* **(1976) 4 SCC 158 : [1977] 1 SCR 280 ;** *Ramanbhai Naranbhai Patel & Ors. v. State of Gujarat* **(1999) 9 JT 319 : [1999] 5 Suppl. SCR 41 ;** *Chandra Bihari Gautam & Ors. v. State of Bihar* **JT (2002) 4 SC 62: [2002] 2 SCR 1164;** *Radha Mohan Singh @ Lal Saheb & Ors. v. State of U.P.* **JT (2006) 1 SC 428 : [2006] 1 SCR 519 ;** *Rizan & Anr. v. State of Chhattisgarh* **(2003) 2 SCC 661 : [2003] 1 SCR 457 ;** *State of Uttar Pradesh v. Ram Kumar & Ors.* **(2017) 14 SCC 614 ;** *Brahm Swaroop & Anr. v. State of Uttar Pradesh* **(2011) 6 SCC 288 : [2010] 15 SCR 1** *Dilawar Singh & Ors. v. State of Haryana* **(2015) 1 SCC 737 : [2014] 7 SCR 844 ;** *State of Andhra Pradesh v. M. Madhusudhan Rao* **(2008) 15 SCC 582 : [2008] 14 SCR 1170 ;** *Kishan Singh (Dead) Through LRs v. Gurpal Singh & Ors.* **(2010) 8 SCC 775 : [2010] 10 SCR 16 – relied on.**

State of U.P. v. Moti Ram & Ors. **(1990) 4 SCC 389 : [1990] 2 SCR 939 ;** *Balaka Singh & Ors. v. The State of Punjab* **(1975) 4 SCC 511 : [1975] Suppl. SCR 129 – distinguished.**

Case Law Reference

(1975) 4 SCC 649	**relied on**	**Para 12**
[1977] 1 SCR 280	**relied on**	**Para 12**
[1999] 5 Suppl. SCR 41	**relied on**	**Para 12**
[2002] 2 SCR 1164	**relied on**	**Para12**
[2006] 1 SCR 519	**relied on**	**Para 12**
[1990] 2 SCR 939	**distinguished**	**Para 17**
[1975] Suppl. SCR 129	**distinguished**	**Para 17**
[2003] 1 SCR 457	**relied on**	**Para 20**
(2017) 14 SCC 614	**relied on**	**Para 21**
[2010] 15 SCR 1	**relied on**	**Para 21**
[2014] 7 SCR 844	**relied on**	**Para 23**
[2008] 14 SCR 1170	**relied on**	**Para 24**
[2010] 10 SCR 16	**relied on**	**Para 25**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 764 of 2009.

From the Judgment and Order dated 13.03.2008 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 241-DB of 1999.

Arvind Kumar, Mrs. Laxmi Arvind, Pradeep Kumar Mathur, Nawal Kishore, Deepankar, Chiranjeev Johri, Chandra Nand Jha, M. K. Tiwari, Advs. for the Appellants.

Dr. Monika Gusain, Adv. for the Respondent.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J.

1. This appeal takes exception to the judgment and order dated 13th March, 2008 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.241-DB of 1999, whereby the conviction and sentence awarded to the appellants Rohtas (Accused No.1) and Surender Singh (Accused No.2) for offences punishable under Section 302/34 of the Indian Penal Code, 1860 (IPC) by the Trial Court came to be confirmed.

2. Initially, six accused were tried for the offence registered as FIR No.298 on 26th April, 1998 at Police Station, City Palwal. Bishan Singh (PW-1) reported the matter to the police station whose statement came to be recorded on 25th April, 1998 at about 11.30 p.m., alleging that at about 6.30 p.m. a quarrel had taken place between two groups. He was member of one of the groups whereas Roop Chand (Accused No.4) was member of another group that had assaulted his brother Ved Prakash and nephew Anil Kumar. They had sustained injuries and were taken to Government Hospital, Palwal by Bishan Singh (PW-1), Rati Chand (father of Anil Kumar) and Baljit Singh (PW-2) for treatment. At about 8.30 p.m., when they were standing at the gate of Government Hospital Palwal, his brother Mohar Pal arrived there on a motorcycle. He was told to bring money from a commission agent at Anaj Mandi, Palwal. When Mohar Pal was leaving towards Anaj Mandi, at a distance of about ten paces from the gate of the hospital, all the six accused persons came from the front side and stopped his motorcycle. Soon thereafter, appellants Rohtas (Accused No.1) and Surender Singh (Accused No.2) both inflicted knife blows one after the other in the stomach of Mohar Pal. Immediately thereafter, Mohar Pal attempted to run away by raising alarm "*mar diya, mar diya*". Billu (Accused No.5) and Rajender (Accused No.3) caught hold of Mohar Pal and Dev Kumar (Accused No.6) gave one knife blow in the abdomen of Mohar Pal. Similarly, Roop Chand (Accused No.4) gave knife blow in the abdomen of Mohar Pal. He also gave a knife blow on the waist of Mohar Pal as a result of which Mohar Pal fell down. It is stated that Bishan Singh, Ravi, Ved Prakash, Anil and Baljit Singh (PW-2), who were present at the scene, ran towards the spot and on seeing them, the accused persons ran away. Thereafter, Mohar Pal was immediately removed to the hospital in injured condition where he succumbed to the injuries and was declared dead. On the basis of this FIR, the investigation was taken over by ASI Gian Singh (PW-6).

3. After completion of investigation, charge-sheet was filed against six accused persons for offence punishable under Sections 148, 302 and 149 IPC. The trial commenced before the Additional Sessions Judge (I), Faridabad being Sessions Case No.40 of 1998. Both sides produced witnesses. According to the accused persons, they were falsely implicated. Further, it is their stand that Mohar Pal was injured in the previous incident which had taken place at 6.30 p.m. on the same evening. He was member of the aggressor party. During the fight which

took place, he must have sustained injuries at the hands of opposite party. It was also the case of the accused that Mohar Pal had suffered injuries at some other place near Anaj Mandi and he was brought to the hospital in a three-wheeler. In other words, the incident did not happen near the hospital.

4. On the basis of such alternative plea, the accused persons denied their involvement in the commission of the offence. After completion of the trial and recording of statements of the concerned accused persons under Section 313 of the Code of Criminal Procedure, the Trial Court finally convicted Rohtas (Accused No.1), Surender Singh (Accused No.2), Roop Chand (Accused No.4) and Dev Kumar (Accused No.6) but acquitted Rajender (Accused No.3) and Billu (Accused No.5) by giving them benefit of doubt. The Trial Court accordingly convicted the four accused under Section 302 read with Section 34 IPC and sentenced them to undergo life imprisonment and to pay fine of Rs.30,000/- each to the widow of deceased Mohar Pal, in default to undergo further rigorous imprisonment for two years. This decision was carried in appeal by Accused Nos. 1, 2, 4 and 6 being Criminal Appeal No.241-DB of 1999 before the High Court of Punjab and Haryana at Chandigarh. The High Court, on reappreciation of the evidence on record, affirmed the finding of guilt against the appellants Rohtas (Accused No.1) and Surender Singh (Accused No.2) but acquitted Roop Chand (Accused No.4) and Dev Kumar (Accused No.6) by giving them benefit of doubt. As regards the appellants, the High Court, vide impugned judgment, opined that the evidence on record clearly established their involvement in the commission of the offence and causing death of Mohar Pal by inflicting knife blow injuries to which he eventually succumbed.

5. Resultantly, the appellants, Rohtas (Accused No.1) and Surender Singh (Accused No.2) have assailed the finding of guilt recorded against them by way of this appeal, arising from special leave petition.

6. Neither the State nor the complainant had challenged the acquittal of Rajender (Accused No.3) and Billu (Accused No.5) by the Trial Court nor the acquittal of Roop Chand (Accused No.4) and Dev Kumar (Accused No.6) by the High Court. Their acquittal has become final.

7. In the present appeal, the assail is based essentially on the argument that both the Courts below have misread or misappreciated the evidence on record. The evidence of Bishan Singh (PW-1) and Baljit Singh (PW-2) was unreliable and was an attempt to falsely implicate the appellants. It is urged that the prosecution has failed to prove the case beyond reasonable doubt even against the appellants. According to the appellants, the real and core facts have not been properly investigated and the prosecution's case is replete with several deficiencies such as :-

"(i) No seizure list of clothes of deceased made by IO;

(ii) Blood group of deceased was not ascertained, hence no link was established between blood found on alleged kurta and blood stained earth with the blood of the deceased. Thus the prosecution has totally failed to establish the link between blood found on the seized articles and blood of the deceased;

(iii) Prosecution though allegedly recovered the alleged knife and sent it to FSL, but it did not produce the said knife in the Court nor got it exhibited, besides there were no blood stains, hence the recovered knife cannot be connected with this crime;

(iv) Shirt was seized as per recovery memo Ex. PB, but Kurta was replaced while sending it to FSL;

(v) Kurta if worn by the deceased while he was injured by knife, must have cut signs but there was none;

(vi) No Independent Panchas (Recovery witness) examined by the prosecution;

(vii) The IO has miserably failed to show in the Sketch plan Ex PH as to from which place or places, trail of blood was there as per FIR and alleged blood recovered, since in the alleged first attack by appellants the deceased was on motor cycle, which he left and tried to run away by making noise "mar diya mar diya" and thereafter he was knived at least two to three times by Roop Chand and Devi;

A (viii) No Independent witness examined either for the occurance or for the alleged Recovery and Inquest Report;

(ix) The most important and valuable witnesses i.e. Anil and Ved Prakash were withheld by the prosecution, who also
B participated in the earlier village incident @ 6.30 pm and got injured;

(x) Prosecution did not examine any eye witness of the incident which occurred in the village at about 6.30 pm on 25/04/1998, which was shown as motive for the
C present incident allegedly @ 8.30 pm.

(xi) Prosecution purposely withheld MLR of the deceased which was proved by the defence through DW-2 and on the said MLR and injuries sustained by Moharpal, Ved Prakash & Anil, there was a cross case through
D the FIR lodged by injured Ved Prakash u/s 323/324/506/ 149 r/w 148 IPC at PS Sadar, Case was tried by Judicial Magistrate 1st Class, Palwal, and the accused were acquitted vide judgment dated 24/01/2007;

(xii) Sketch plan Ex PH does not show as to where
E motorcycle was thrown, where deceased threw away his clothes, where the witnesses PW-1, PW-2 and their Associates were standing and from which place body of the deceased was lifted and brought to the Hospital. Hence the prosecution has miserably failed to connect
F the place of occurrence with the commission of offence;

(xiii) In this case FIR appears to be concocted, fabricated and recorded and after consultations etc. It appears that FIR was lodged only after Inquest report where the time of death was recorded as 11.50 AM on the dictates of
G PW-1 and also there would have been fully disclosed genesis of the crime, names of the assailants, name of the weapon and names of the witnesses etc, which are completely missing in the Inquest report.

(xiv) There is the variance between the alleged FIR and
H report of IO for registering case;

(xv) Non-seizure of Motor Cycle;

(xvi) Non production of Anil and Ved Prakash as witnesses and various other irregularities and serious lapses of the Investigation including improper statement of IO PW-6 which entitles benefit of doubt to the appellants."

8. According to the appellants, the Trial Court and the High Court have completely glossed over the glaring infirmities and foundational defects of the prosecution which were fatal, and in any case, the appellants deserved similar benefit of doubt as given to other accused persons by the Trial Court and then by the High Court. The role of the other accused persons spoken about by the prosecution witnesses is no different than that ascribed to the appellants. Accordingly, it is urged that the appellants be acquitted as the prosecution has failed to prove their guilt beyond reasonable doubt, and in any case, they should be given benefit of doubt as is given to accused Roop Chand (Accused No.4) and Dev Kumar (Accused No.6) by the High Court.

9. Learned counsel for the State has adopted the reasons recorded by the Trial Court and the High Court to distinguish the case of the appellants Rohtas (Accused No.1) and Surender Singh (Accused No.2), who have been named by the prosecution witnesses, and because there is clinching evidence on record to establish their guilt. It is urged that there is no deficiency in the investigation nor in the evidence produced before the Court which commended the Trial Court as well as the High Court to record finding of guilt against the appellants. It cannot be said to be inadequate in any manner. On the other hand, it is evident that the accused persons took contradictory plea by first asserting that Mohar Pal sustained injuries during the fight between two groups in the earlier incident which had occurred at 6.30 p.m. on the same evening. Having realised that the said plea cannot be substantiated by them, alternative plea was taken that the incident in question did not occur near the Government hospital and the injuries suffered by Mohar Pal were sustained at some other place near Anaj Mandi from where he was brought in a three-wheeler to the hospital for being admitted for treatment. However, no evidence was produced by the accused to substantiate that fact. It is urged by the State that just because co-accused have been acquitted, that does not warrant grant of same relief to the appellants despite the clinching evidence against them about their role and the manner of commission of offence by them.

A The learned counsel for the State contended that even if the State has not challenged the acquittal of other accused persons, that by itself cannot be the basis to acquit the appellants herein, for there is sufficient evidence against them and has been produced by the prosecution to bring home their guilt. It is thus contended that the benefit given to other accused by the High Court cannot be the basis to give similar benefit to the appellants.

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10. It is submitted that the evidence of Bishan Singh (PW-1) and Baljit Singh (PW-2), who were the eye-witnesses, cannot be undermined, at least against the appellants before this Court. It is well established position that the principle of *falsus in uno, falsus in omnibus* has no general applicability in India and the Court is not debarred from separating the truth from the falsehood and accepting a part of the evidence. It is urged that the appeal is devoid of merits and the same be dismissed.

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11. We have heard Mr. Arvind Kumar, Advocate for the appellants and Dr. Monika Gusain Advocate for the respondent State.

12. It is well established position in law that this Court, while entertaining an appeal by way of special leave under Article 136 of the Constitution of India, ordinarily, will not attempt to reappreciate the evidence on record unless the decision of the Trial Court or the High Court is shown to have committed a manifest error of law or procedure or the conclusion reached by the Courts below is, on the face of it, perverse. Merely because another view on the same evidence is possible, that cannot be the basis to interfere with the finding of fact recorded by the Courts below much less concurrent finding of facts. (See ***Duli Chand*** vs. ***Delhi Administration***[1]***; Mst. Dalbir Kaur & Ors.*** vs. ***State of Punjab***[2]; ***Ramanbhai Naranbhai Patel & Ors.*** vs. ***State of Gujarat***[3]; ***Chandra Bihari Gautam & Ors.*** vs. ***State of Bihar***[4]; and ***Radha Mohan Singh @ Lal Saheb & Ors.*** vs. ***State of U.P.***[5]).

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13. Despite this settled position, we may venture to wade through the evidence on record to reassure ourselves as to whether the Trial

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[1] (1975) 4 SCC 649
[2] (1976) 4 SCC 158
[3] (JT 1999 (9) SC 319
[4] JT 2002 (4) SC 62
[5] JT 2006 (1) SC 428

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Court and the High Court have committed manifest error bordering on perversity or error apparent on the face of record. As regards the role of the appellants, Rohtas (Accused No.1) and Surender Singh (Accused No.2), the Trial Court analysed the testimonies of eye-witnesses Bishan Singh (PW-1) and Baljit Singh (PW-2) and found them to be natural and trustworthy. The Trial Court, observed as follows :-

> "20. ..... Both of them have stated that in the incident which had taken place in the village, Anil and Ved Parkash from their side had received injuries and that in that connection they had brought them to General Hospital Palwal where Mohar Pal arrived at his motor cycle at 8.30 p.m. and that when Mohar Pal left for Anaj Mandi, Palwal for bringing some money from some commission agent, then he was way laid by the accused persons and then caused injuries by means of knives. No suggestion was given to these PWs that Mohar Pal had received injuries along with Anil and Ved Prakash in the village. They were rather given the suggestions that Baljit (PW-2) and Mohar Pal had gone to Anaj Mandi from the village after the incident had taken place there and both of them had consumed liquor. They were further given the suggestion that Mohar Pal had received injuries in the Anaj Mandi Palwal and Baljit had brought him in a rickshaw for being admitted in the nursing home of Dr. Lokesh which was situated in the vicinity of General Hospital Palwal and when Mohar Pal died then taking undue advantage of his death, this false story was coined implicating the accused. They were further given the suggestion that Mohar Pal had received injuries from sharp edged railings of the kitchen garden of the commission agent to whom he had gone. No suggestion at all was given that Mohar Pal was rendered injured for the incident that took place in the evening in the village. Thus, the plea that the accused party caused injuries to Mohar Pal in the right of private defence is absolutely baseless.
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> 21. It is true that in the FIR No.152 dated 28/4/1998 vide Ex. DB recorded at Police Station Sadar Palwal against the complainant party, it was mentioned that Anil, Ved Prakash and Mohar Pal were caused injuries in defence. This first information report was lodged by Rajinder accused. However, no reliance can be placed upon this version as the same came into existence after the death of Mohar Pal had taken place. A perusal of the

A Fir Ex. DB shows that the same came to be recorded on the basis of rapat No.5 dated 26.1.1998 at 9 a.m. By that time, Mohar Pal had expired and to us allegation that he had (sic) been caused injuries in the incident of 25.4.1998 at 6.30 p.m. in the village cannot be given any credence. Morever, it is well established that the FIR is not a substantive evidence by itself. The same can be used only for the purpose of contradicting or corroborating a particular versions. The accused have not examined any witness in their defence who could depose that Mohar Pal had been caused injuries by the accused party in their right of private defence in the incident that took place in the village."

C The Trial Court, further observed :-

"But in the case this Judgment does not help to the accused in any manner because there is no whisper of suggestion even in the cross examination of Bishan Singh and Baljit Singh PWs that Mohar Pal had been cause injuries in the incident which took D place on 25.4.1998 evening in the village."

The Trial Court again observed :-

"24. It is true that Bishan Singh (PW-1) Baljit (PW-2) Ratti Chand, Ved Prakash and Anil could not case effective resistance E when Mohar Pal was assaulted by the accused within their sight (sic). But that by itself is no ground to paint their statements with black color. Incident after all had taken place near General Hospital, Palwal as the investigating officer ASI Gian Singh also lifted blood stained earth from there. Presence of these persons there was natural as they must have come to obtain treatment F for Anil and Ved Parkash, who had received injuries in the prior altercation that took place in the village.

…….. In the present case, the incident appears to have taken place all of a sudden near the hospital. It might have lasted only 2-3 minutes, Bishan Singh, Baljit Singh and thus it is not surprising G that they could not effectively intervene (sic) by chasing the accused."

The High Court, on reappreciation of the evidence, once again observed as follows :-

"PW-1 Bishan Singh and PW 2 Baljit Singh can be safely relied H upon about Mohar Pal having been assaulted in the occurrence

at 8.30 PM. Contention that there was delay in FIR or that the FIR was ante-timed or that the genesis of the occurrence was suppressed, based only on the ground that in the inquest report, number of the FIR and names of the FIR and names of the accused were not mentioned, has no merit. Statement of Bishan Singh PW 1 is duly recorded in the inquest report and entire version given by him in the FIR including presence of PW 2 Baljit Singh finds mention therein. Reading of a part of the statement separately recorded that he identified the dead body of which post mortem was being done, as statement recorded later is not justified. Testimony of PW 1 Bishan Singh and PW 2 Baljit Singh cannot be rejected but has to be carefully appreciated by accepting that part which may be clearly reliable and by not accepting the part which may not be safe to be relied upon. Role of each accused has to be carefully considered.

According to the version given by PWs, when Mohar Pal had left for the Anaz Mandi on motor cycle, he was stopped by the accused. Rohtas and Surender, gave one knife blow each in the stomach of Mohar Pal. We do not find any reason to reject this part of the version with regard to Rohtas and Surender. Rohtas and Surender are sons of Shiv Singh, who according to the defence, were injured in the earlier incident. A knife has been recovered from Rohtas. Opening of the attack by Rohtas and Surender could have been easily noticed by Bishan Singh PW1 and PW 2 Baljit Singh, whose presence on the spot is established by prompt lodging of the FIR. Mere fact that their names are not mentioned in the MLR, does not create any doubt. In the MLR, it has not been mentioned as to who brought the injured to the hospital. The fact that the injured was described as having died, instead of having been injured, is not a major discrepancy. The injured died within half an hour and immediately the police was informed. The I.O., recorded the statement of Bishan Singh PW 1 in the hospital itself soon after the death. FIR was formally registered immediately at 12.45 AM in the night and copy was received by the Magistrate in the night itself by 4 AM. Case of the prosecution is to be examined a whole and any minor discrepancy cannot be taken in isolation. Mere fact that the said witnesses did not intervene to save the deceased, is of no effect. The witnesses were at some distance and within minutes, the

A accused caused injuries to the deceased. The witnesses had, thus, no opportunity to intervene. Discrepancy of the I.O. in not recovering the motor cycle or not showing the source of light, does not create any suspicion about the version of the prosecution."

B 14. After perusing the evidence of Bishan Singh (PW-1), we have no hesitation in taking the view that the concurrent finding of fact recorded by the two Courts below needs no interference. Bishan Singh (PW-1) in his examination-in-chief has deposed as follows :-

"At about (sic) 8.30 p.m. on the same day I, Rati Chand and
C Baljit were talking at the gate of G.H. Palwal. My brother Mohar Pal also came there on a motor cycle. I then sent Mohar Pal back for bringing money from a commission agent in the Anaz Mandi, Palwal.

Mohar Pal must have crossed hardly a distance of 10 paces that
D the accused Rohtas, Surender, Billu, Rajender, Roopi and Devi present in the Court came there and they made to stop the Mohar Pal's motor cycle. Rohtas and Surender then gave one knife blow each on the abdomen of Mohar Pal. Leaving his motor cycle, Mohar Pal then started running and raised the alarm of mar-diya
E mardiya. Billu and Rajender then caught him and Roopi accused gave a knife blow on his back and Devi accused gave another knife blow on his abdomen with the result that Mohar Pal died at the spot. When I, Rati Chand, Ved Parkash and Anil etc. started running for saving Mohar Pal, then the accused persons ran away."

F 15. He has been extensively cross-examined but the cross-examination does not make any dent with regard to his statement in the examination-in-chief that Rohtas (Accused No.1) and Surender Singh (Accused No.2) gave knife blow each on the stomach of Mohar Pal and caused the fatal injuries. Dr. Ramesh Leekha (PW-5) has
G spoken about the injuries in his evidence and the same also can be noticed from the post-mortem report of Mohar Pal that he had sustained the following injuries :-

"1. Incised wound 3 x 0.25 cm, 8 cm above and lateral to umbilicus. On the opening of the abdomen, the middle
H log of liver was found cut badly with huge quantity of

blood in the abdominal cavity. Superficial and deep facie with omentum and peritoneum was cut through and through.

2. Incised wound 2.5 x 0.5 cm which was 2 cm above and lateral to umbilicus underlying superficial and deep facia and omentum was cut on the left side of the abdomen.

3. Reddish abrasion 8 cm long and linear in shape and 8 cm above and lateral to the left side of umbilicus.

4. Incised wound 1 x 0.5 cm n the left supra scapular region underlying muscles were cut with no injury to lung or pleura."

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VI-REMARKS BY MEDICAL OFFICER

In my opinion the cause of death in this case in shock and haemorrhage (sic) as a result of injuries sustained by the deceased, particularly No.1 which alone in sufficient to cause death in an ordinary course of nature. All injuries are ante mortem in nature."

16. Suffice it to observe that the cross-examination of Bishan Singh (PW-1) does not take the matter any further for the appellants, as is rightly held by the two Courts below. Same is the position with regard to the evidence of Baljit Singh (PW-2). Even he has plainly mentioned about the manner in which Mohar Pal was stopped by all the accused persons when he was riding his motorcycle and immediately thereafter Rohtas (Accused No.1) and Surender Singh (Accused No.2) inflicted knife blows on his stomach one after the other. The fact that similar role has been ascribed to Roop Chand (Accused No.4) and Dev Kumar (Accused No.6) but the High Court acquitted them by giving benefit of doubt cannot be the basis to undermine the quality of evidence which has already come on record. We are not dilating on the correctness of the view so taken by the High Court *qua* those accused as neither the State nor the complainant has assailed the finding recorded by the High Court in that regard. That does not mean that a wrong relief given to co-accused should also be given to the appellants against whom clinching evidence has come on record about the manner in which the offence was committed by them.

17. Reverting to the exposition of this Court in ***State of U.P.*** vs. ***Moti Ram & Ors.***[6], it turns on the facts of that case. That case was an appeal against acquittal and the quality of evidence was not reassuring and warranting a finding of guilt against the acquitted accused. Even in the case of ***Balaka Singh & Ors.*** vs. ***The State of Punjab***[7], this Court was dealing with evidence against the appellants and four accused named along with the appellants therein, which was so inextricably mixed up that it was not possible to separate one from the other.

18. In the present case, however, the evidence of Bishan Singh (PW-1) and Baljit Singh (PW-2), who are the eye witnesses, has mentioned about the events as unfolded. First, all the accused persons obstructed Mohar Pal who was riding a motorcycle. Immediately after he was stopped, both the appellants inflicted knife blows on the stomach of Mohar Pal one after the other. This role of the appellants is distinct. Thereafter Mohar Pal attempted to flee away from the spot when he was stopped by the other accused persons and two of them inflicted knife blows one after the other. The events, therefore, can be segregated.

19. So far as the second event is concerned, the Trial Court and the High Court gave benefit of doubt to the concerned accused. In that sense, the appellants are not concerned with that part of the event. As aforementioned, even if we do not agree with the approach of the High Court in absolving Accused Nos.4 and 6, we refrain from dilating on the said approach of the High Court as neither the State nor the complainant has assailed the acquittal of those accused. In any case, wrong benefit given to those accused cannot enure to the advantage of the appellants against whom clear, truthful and unassailable evidence is forthcoming. For, neither the presence of Bishan Singh (PW-1) and Baljit Singh (PW-2) can be doubted nor their evidence can be discarded on the specious ground that they are related to the deceased Mohar Pal, and are therefore interested witnesses.

20. Indubitably, just because the witnesses are related cannot be the basis to discard their evidence, if it is otherwise natural and truthful. Their evidence has commended to the Trial Court as well as the High Court as truthful and we see no reason to deviate from that concurrent

[6] (1990) 4 SCC 389
[7] (1975) 4 SCC 511

view taken by the Courts below. It is the duty of the Court to separate the grain from the chaff and then to arrive at a finding of guilt of an accused or otherwise, notwithstanding the fact that evidence is found to be deficient qua another accused named in the same offence. The maxim *falsus in uno, falsus in omnibus* has not received general acceptance in India nor has this maxim come to occupy the status of rule of law. This has been restated in ***Rizan & Anr. vs. State of Chhattisgarh***[8]. In paragraph 12 of the said decision, the Court observed, thus :-

> "12. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence, prayer is to apply the principle of *falsus in uno falsus in omnibus* (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where the chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. **The maxim *falsus in uno falsus in omnibus* has no application in India and the witnesses cannot be branded as liars. The maxim *falsus in uno falsus in omnibus* has not received general acceptance nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See *Nisar Ali* v. *State of U.P.*) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as**

[8] (2003) 2 SCC 661

A **direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted.** It is always open to a court to differentiate accused who had been acquitted from those who were convicted. (See *Gurcharan Singh* v. *State of Punjab*.) The doctrine is a dangerous one, specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a deadstop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See *Sohrab* v. *State of M.P.* and *Ugar Ahir* v. *State of Bihar*.) An attempt has to be made to, as noted above, in terms of the felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because the grain and the chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel* v. *State of M.P.* and *Balaka Singh* v. *State of Punjab*.) As observed by this Court in *State of Rajasthan* v. *Kalki* normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category into which a discrepancy may

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be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi* v. *State of Bihar* and *Gangadhar Behera* v. *State of Orissa*. Accusations have been clearly established against the accused-appellants in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and convicted accused are concerned."

(emphasis supplied)

21. In another decision of this Court in ***State of Uttar Pradesh*** vs. ***Ram Kumar & Ors.***[9], it is held that minor discrepancies in the statement of witnesses of trivial nature cannot be a ground to reject evidence as a whole. The Court relied upon the exposition of ***Brahm Swaroop & Anr.*** vs. ***State of Uttar Pradesh***[10]. In paragraph 32 of the said decision, the Court observed, thus :-

"*32.* It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the court to reject the evidence in its entirety. "*Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions*." Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. (See *State of U.P.* v. *M.K. Anthony*, *State of Rajasthan* v. *Om Prakash*, *State* v. *Saravanan* and *Prithu* v. *State of H.P.*)"

[9] (2017) 14 SCC 614
[10] (2011) 6 SCC 288

22. The so-called deficiencies pointed out by the appellants in the investigation or the prosecution case, in our opinion, are insignificant and trivial and cannot be the basis to reject the whole evidence of Bishan Singh (PW-1) and Baljit Singh (PW-2) which is corroborated by the other evidence in the form of medical reports and recovery of human blood stained soil from the spot near the hospital where Mohar Pal was assaulted by the accused. The fact that the blood group of the human blood stained soil cannot be ascertained, can be no basis to discard that piece of evidence. Even the recovery of weapon used by Rohtas (Accused No.1) during the commission of the offence reinforces the role and involvement of the appellants in the commission of the crime. The quality substantive evidence on record clearly establishes the guilt of the appellants.

23. In a recent decision in ***Dilawar Singh & Ors.*** vs. ***State of Haryana***[11], the Court restated that while analysing the evidence of eye witnesses, it must be borne in mind that there is bound to be variations and difference in the behaviour of the witnesses or their reactions from situation to situation and individual to individual. There cannot be uniformity in the reaction of witnesses. The Court must not decipher the evidence on unrealistic basis. There can be no hard and fast rule about the uniformity in human reaction. The difference in the statements of the prosecution witnesses about the conditions of Mohar Pal when he was admitted in the hospital, therefore, does not take the matter any further especially when the medical reports clearly indicate that he was admitted in the hospital in semi-conscious state and was declared dead by the doctor only thereafter.

24. As regards, the delay in registration of FIR, that aspect has also been considered by the Trial Court and the finding recorded by the Trial Court rejecting that defence plea found favour with the High Court. We see no reason to deviate from the conclusion so recorded that there was no delay in registration of FIR in the facts of the present case. The significance of registration of FIR without loss of time need not be underscored. This Court in ***State of Andhra Pradesh*** vs. ***M. Madhusudhan Rao***[12], while dealing with similar arguments, observed in paragraph 30 as follows :-

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[11] (2015) 1 SCC 737

[12] (2008) 15 SCC 582

"30. Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained."

25. In the present case, there has been no delay as is evident from the contemporaneous record. Mohar Pal was admitted in hospital immediately after the incident and was examined by Dr. Ramesh. Mohar Pal was declared dead at 11.00 p.m. The City Police Station was informed by the doctor at 11.30 p.m. Thereafter, Bishan Singh (PW-1) complained to ASI Gian Singh (PW-5) near hospital building and finally the FIR was registered at 0015 hrs. on the night between 25th and 26th April, 1998. In ***Kishan Singh (Dead) Through LRs*** vs. ***Gurpal Singh & Ors.***[13], This Court had observed as follows :-

"22. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with

[13] (2010) 8 SCC 775

A a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide *Chandrapal Singh* v. *Maharaj Singh*; *State of Haryana* v. *Bhajan Lal*; *G. Sagar Suri* v. *State of U.P.*; and *Gorige Pentaiah* v. *State of A.P.*)"

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26. In view of the above, we have no hesitation in upholding the view taken by the Trial Court that there was no delay in registration of the FIR in the fact situation of the present case.

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27. We are also in agreement with the view taken by the Trial Court and affirmed by the High Court that the defence had taken self-contradictory stand. First, it was asserted that Mohar Pal sustained injuries in the first incident which had occurred at 6.30 p.m. on the same evening. However, no evidence in support of that plea was forthcoming.

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Then, the alternative plea taken by the defence was that Mohar Pal was, in fact, injured at some other place near Anaj Mandi and was brought in a three-wheeler to the hospital. Even this plea of the accused has been held to be figment of imagination and without any evidence in support thereof. On the other hand, the prosecution has produced

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evidence in the form of human blood soiled mud from the spot near the hospital where the incident in question had occurred as stated by Bishan Singh (PW-1) and Baljit Singh (PW-2).

28. Even the fact that the accused have been acquitted in the cross-cases filed with regard to the first incident which took place at

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6.30 p.m. on the same evening will not take the matter any further for the appellants. That was an independent incident whereas the finding of guilt recorded against the appellants is concerning the incident which had taken place at 8.30 p.m. near the Government Hospital, Palwal as proved by the prosecution witnesses. In fact, the incident at 8.30 p.m.

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was the counter blast of the fight which had taken place between two groups at 6.30 p.m. and the previous enmity between them. The fact that there is no evidence about the previous enmity and that no evidence is produced by the prosecution in that regard, in our view, cannot be the basis to reverse the concurrent view taken by two Courts below -

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recording finding of guilt against the appellants for commission of

offence to assault Mohar Pal near the Government Hospital, Palwal at around 8.30 p.m. on 25th April, 1998. A

29. Taking any view of the matter, therefore, no interference is warranted in this appeal and we are disposed to dismiss the same. Accordingly, this appeal is dismissed. The bail bonds of the appellants stand cancelled. The appellants shall surrender within four weeks from today failing which, the local police station must take necessary action against the appellants in accordance with law. B

Devika Gujral Appeal dismissed.